IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 21414 of 2007

DATED: 30.10.2007

Between:
S Thirupathi Rao petitioner

And

The Hon'ble Industrial Tribunal cum
Labour Court,
Rep by its Presiding Officer,'
Godavarikhani, Karimnagar & another Respondents

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 21414 of 2007

ORAL ORDER:

This writ petition is filed challenging the award dated 15.5.2001 in I.D. No. 155 of 1999 and order dated 24.2.2007 in I.A No. 52 of 2006 refusing to set aside the exparte order dated 15.5.2001, as illegal and unjust.

The petitioner, who was employed in the respondent corporation as conductor was issued with a charge sheet dated 31.8.1998 alleging cash and ticket irregularities. The petitioner submitted his explanation, however, having not satisfied with the same, disciplinary proceedings were initiated against the petitioner, wherein the charges leveled against the petitioner were held proved. Based on the findings of the enquiry officer, the petitioner was removed from service by order dated 1.3.1999. The appeal preferred by the petitioner was rejected by order dated 1.7.1999. Hence, the petitioner raised an industrial dispute and the same was registered as I.D. No. 155 of 1999 on the file of the Industrial Tribunal cum Labour Court, Godavarikhani. The Labour Court, passed an award dated 15.5.2001 confirming the removal order dated 1.3.1999. Thereafter, the petitioner filed an application in I.A

No. 52 of 2006 to set aside the exparte award dated 15.5.2001 on the ground that due to bus failure he could not attend the Court on 15.5.2001 and could not inform his counsel and that the copy of the award was not received by him. The Labour on consideration of the matter, dismissed the said application by its order dated 24.2.2007 on the ground that no sufficient cause is made out to set aside the award dated 15.5.2001. Hence, the present writ petition.

The learned counsel for petitioner submitted that the Labour Court, without considering the facts and circumstances of the case and without even recording its findings on the validity of domestic enquiry, passed an ex-parte award. It is further submitted, the copy of the award was also not received by the petitioner and due to domestic and financial problems he could not contact his counsel and the Labour Court without considering these facts, dismissed the application in I.A. NO.52 of 2006 holding that the petitioner has not made sufficient cause to set aside the award. It is thus, prayed that the petitioner has fair chances of success and the
ex-parte award dated 15.5.2001 may be set aside and the matter may be remitted back for fresh disposal.

Learned Government Pleader for Labour, fairly conceded that since the Labour Court has passed the award without deciding the validity of the domestic enquiry, the matter may be remitted back for afresh disposal. Learned Standing counsel for respondent corporation also admitted the same.

Heard learned counsel for petitioner, learned Government Pleader for Labour and learned Standing Counsel for respondent

corporation and perused the material available on record, including the award in question.

A perusal of the award dated 15.5.2001 would clearly indicate that the Labour Court has not considered the validity of the domestic enquiry and straight-away passed an award without recording any reasons by merely narrating the events and referring to the exhibits marked by the management. The Apex Court in **COOPER ENGINEERING LIMITED Vs. P.P. MUNDHE**[1] held that in cases of dismissal or discharge of an employee referred for industrial adjudication, the Labour Court should first decide validity of domestic enquiry as preliminary issue; The operative portion reads as under;

> "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry of defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue….."

Since, the award dated 15.5.2001 is passed without deciding the validity of the domestic enquiry, the same is not in consonance with the dicta laid down by the Apex Court in **Cooper Engineering Ltd** (cited supra). Hence, the award dated 15.5.2001 and orders passed in I.A.No.52 of 2006 dated 24.2.2007 are liable to be set aside and the matter be remitted to the Labour Court for fresh disposal from the stage

of deciding the validity of the disciplinary enquiry report.

Accordingly, the writ petition is allowed and the award dated 15.5.2001 in I.D. No. 155 of 1999 and the order dated 24.2.2007 in I.A. No. 52 of 2006 are set aside. The matter is remitted to the Labour Court for fresh adjudication from the stage of deciding the validity of the domestic enquiry, after giving reasonable opportunity to the petitioner to adduce evidence on his behalf and after appreciation of the material placed on record. No costs.

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N.V.RAMANA,J

DATE: 30.10.2007

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[1] 1975 (2) SCC 661